



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200919070

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 09 2009

Uniform Issue List: 408.03-00

SE:TEP:RA:T1

Legend:

Taxpayer	=
IRA A	=
Financial Institution B	=
Financial Institution C	=
Account D	=
City E	=
Individual F	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated November 6, 2007, as supplemented by additional correspondence dated February 19, 2008, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from your individual retirement annuity (IRA A) maintained with Financial Institution B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 79 at the time of the distribution of Amount 1 from IRA A, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her reliance on the actions of an investment advisor at Financial Institution C. Amount 1 was deposited by Taxpayer into Account D, a non-IRA account with Financial Institution C. Amount 1 remains in Account D and has not been used for any purpose. Taxpayer received a Form 1099-R for 2006 from Financial Institution B showing a taxable distribution equal to Amount 2.

Taxpayer maintained IRA A, an individual retirement annuity under section 408(b) of the Code. Taxpayer represents that on May 16, 2006, on the advice of an investment advisor at Financial Institution C, Taxpayer instructed Financial Institution B to liquidate IRA A and transfer the proceeds to an IRA with Financial Institution C. This individual and the manager of a branch of Financial Institution C, located in City E, helped Taxpayer complete the application form for the transfer of funds from IRA A. Financial Institution B prepared a check totaling Amount 2 which was sent directly to Financial Institution C. On June 2, 2006, Taxpayer met with Individual F, a financial specialist with Financial Institution C, who incorrectly designated on the application form that proceeds from the liquidation of IRA A, totaling Amount 1, was to be deposited in Account D, a non-IRA account. Taxpayer believing Account D to be an IRA, signed the application. Taxpayer intended for Amount 1 to be rolled over to an IRA with Financial Institution C. She desired to transfer funds in her IRA annuity (IRA A) to an IRA invested in a certificate of deposit because the latter promised a higher rate of return. Taxpayer relied on the expertise of Individual F to accomplish the transfer. Taxpayer discovered the error in early, 2007, after receiving a Form 1099-R from Financial Institution B showing a taxable distribution of Amount 2.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if –

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to her reliance on an employee of Financial Institution C, whose actions mistakenly resulted in the deposit of Amount 1 into Account D, a non-IRA account. His actions constituted an error by a financial institution.

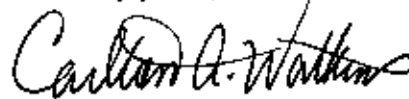
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA A. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____, (I.D. # _____), at (_____) _____.

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: